

test, unless any or all of the five percent cash requirement is waived by application of the high cost criteria described in §241.5(d). The project sponsor shall make cash payments during construction at a rate such that the amount of non-Federal payments in each year, as a percentage of total non-Federal cash payments, equals the amount of Federal expenditures (including sunk pre-construction engineering and design costs as a first year Federal construction expenditure) as a percentage of total Federal expenditures. Total Federal expenditures include cash payments for construction and if necessary (due to ability to pay considerations), for LERRD, and for reimbursement to the non-Federal sponsor. Total Federal expenditures for the purpose of this calculation, do not include expenditures which allow the non-Federal sponsor to defer payment of the non-Federal share under the provisions of this rule.

(f) For non-structural projects, reductions in the non-Federal cost-share as a result of the ability to pay test will not affect the procedures for determining the non-Federal and Federal payment schedules. For non-structural projects, no specific cash payments during construction are required by law.

[54 FR 40581, Oct. 2, 1989, as amended at 60 FR 5134, Jan. 26, 1995]

PART 242—FLOOD PLAIN MANAGEMENT SERVICES PROGRAM ESTABLISHMENT OF FEES FOR COST RECOVERY

Sec.

- 242.1 Purpose.
- 242.2 Applicability.
- 242.3 References.
- 242.4 Definitions.
- 242.5 General.
- 242.6 Fee schedule.

AUTHORITY: Section 321 of Pub. L. 101-640, 74 Stat. 500 (33 U.S.C. 709a).

SOURCE: 56 FR 54712, Oct. 22, 1991, unless otherwise noted.

§242.1 Purpose.

This part gives general instructions on the implementation of section 321 of Public Law 101-640, 74 Stat. 500 (33

U.S.C. 709a) as it applies to the use of a Fee Schedule for recovering the cost of providing Flood Plain Management Services to Federal agencies and private persons.

§242.2 Applicability.

This part applies to all HQUSACE elements, Major Subordinate Commands, and District Commands of the Corps of Engineers having Civil Works responsibilities.

§242.3 References.

The references in paragraphs (b) and (c) of this section may be obtained from USACE Pub. Depot, CEIM-SP-D, 2803 52d Avenue, Hyattsville, MD 20781-1102.

(a) Section 321, Public Law 101-640, 74 Stat. 500 (33 U.S.C. 709a).

(b) Corps of Engineers Engineering Regulation 1105-2-100, Planning Guidance Notebook.

(c) Corps of Engineers Engineering Pamphlet 37-1-4, Cost of Doing Business.

§242.4 Definitions.

As used in this part:

Private persons means all entities in the private sector, including but not limited to individuals, private institutions, sole proprietorships, partnerships, and corporations.

Total cost means total labor charges which include adjustments for benefits, administrative overhead, and technical indirect costs. These terms are described in the reference in §242.3 (c).

§242.5 General.

(a) The Corps of Engineers Flood Plain Management Services Program provides a wide range of flood plain and related assistance upon request. Depending on the complexity of the request, either a nonnegotiated Fee Schedule or a negotiated agreement will be used to recover the cost of services provided to Federal agencies and private persons. This part involves only the nonnegotiated Fee Schedule.

(b) State, regional, or local governments or other non-Federal public agencies will be provided Flood Plain Management Services without charge.